

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RODNEY BANKS,

Plaintiff,

v.

J. PELAYO, et al.,

Defendants.

No. 1:20-cv-00117-DAD-JLT (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
ACTION DUE TO PLAINTIFF'S FAILURE
TO STATE A CLAIM

(Doc. No. 16)

Plaintiff Rodney Banks is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 30, 2020, the assigned magistrate judge screened plaintiff's complaint and found that plaintiff had failed to state any cognizable claim. (Doc. No. 13.) In that screening order, the court provided plaintiff guidance regarding the pleading and legal standards applicable to the two claims that he was attempting to assert in his complaint. (*Id.* at 3–5.) Plaintiff was granted leave to file an amended complaint within thirty (30) days from service of that screening order, or alternatively, if plaintiff did not wish to amend his complaint, he was directed to file a notice of his intent to stand on his complaint. (*Id.* at 5–6.) Plaintiff was warned that if he elected to stand on his complaint, the magistrate judge would issue findings and recommendations recommending

1 that plaintiff's complaint be dismissed, without leave to amend, due to plaintiff's failure to state a
2 cognizable claim. (*Id.* at 5.)

3 On August 17, 2020, plaintiff filed a one-page document with the court captioned "First
4 Amended Complaint," but in substance, it appears that therein plaintiff is notifying the court of
5 his intent to stand on his original complaint because he merely restates the two claims he alleged
6 in his original complaint and asserts that his "factual allegations should not be ignored." (Doc.
7 No. 14 at 1.) Thus, the assigned magistrate judge construed plaintiff's filing as a notice of his
8 intent to stand on his complaint.

9 Accordingly, on February 22, 2021, the assigned magistrate judge issued findings and
10 recommendations recommending that the court dismiss this action without granting further leave
11 to amend, due to plaintiff's failure to state a cognizable claim upon which relief may be granted.
12 (Doc. No. 16.) Those pending findings and recommendations were served on plaintiff and
13 contained notice that any objections thereto were to be filed within fourteen (14) days after
14 service. (*Id.* at 5.) On March 8, 2021, plaintiff timely filed objections to the pending findings and
15 recommendations. (Doc. No. 17.)

16 In his objections, plaintiff again merely restates the two claims that he alleged in his
17 complaint. (*Id.*) Plaintiff does not address the analysis set forth in the pending findings and
18 recommendations or proffer allegations that he would include in an amended complaint if he were
19 granted a second opportunity to file an amended complaint.

20 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
21 *de novo* review of the case. Having carefully reviewed the entire file, including plaintiff's
22 objections, the court concludes that the findings and recommendations are supported by the
23 record and by proper analysis.

24 Accordingly,

- 25 1. The findings and recommendations issued on February 22, 2021 (Doc No. 16) are
26 adopted in full;

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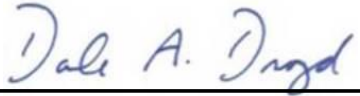
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2. This action is dismissed due to plaintiff's failure to state a claim; and

3. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: April 2, 2021


UNITED STATES DISTRICT JUDGE